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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: RICHARD B. LOWE III Justice PART 39

Index Number : 115835/2007
SHAHIDSALESS, SHAHIR
VS.
EBADI, SHIRIN
SEQUENCE NUMBER : # 001
DISMISS COMPLAINT

INDEX NO. 115835/07
MOTION DATE 6/13/08
MOTION SEQ. NO. #001
MOTION CAL. NO.

...re read on this motion to/for

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

FILED
JAN 14 2009
COUNTY CLERK'S OFFICE
NEW YORK

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 1/12/09

RICHARD B. LOWE III J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 56

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SHAHIR SHAHIDSALESS and FARANAK SHAKOORI,

Plaintiffs, Index No. 115835/07

- against -

SHIRIN EBADI, WENDY J. STROTHMAN, and
THE STROTHMAN AGENCY, LLC,

Defendants.

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Hon. Richard B. Lowe, III:

This action concerns a failed arrangement to coauthor and publish a book. Plaintiffs assert causes of action for breach of oral agreement, quantum meruit, and tortious interference with contract. Defendant Shirin Ebadi moves to dismiss the complaint, arguing lack of personal jurisdiction, forum non conveniens, and failure to state a cause of action, and to stay discovery pending decision of this motion.

BACKGROUND

Plaintiffs Shahir Shahidsaless (hereinafter, plaintiff) and Faranak Shakoori are married to each other. Originally from Iran, they are citizens and residents of Canada. Ebadi (hereinafter, defendant) is an Iranian citizen and resident. Defendants Wendy J. Strothman and the Strothman Agency, LLC reside in Massachusetts.

Defendant maintains that this court cannot have jurisdiction over her, as her dealings with plaintiff have no connection to New York, except for one meeting. Viewed in the light most favorable to plaintiff (*see Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]), the factual allegations are as follow:

Plaintiff writes political commentary in Farsi, the language native to Iran. Defendant received the Nobel Peace Prize in 2003 for her human rights work in Iran. In December 2004, the parties agreed to coauthor a book in Farsi about the relationship between the West and the Islamic world. Defendant wrote one chapter of the book and plaintiff wrote the rest. The parties regularly conferred by e-mail, express mail, and telephone, she from Iran and he from Canada. On October 22, 2005, the parties met in Germany, where they spent over nine hours discussing their project.

On December 28, 2005, defendant e-mailed plaintiff that she was going to be in the United States for 40 days starting January 17, 2006, that she would be in New York City for a few days, and that she wanted to meet plaintiff there. Defendant alleges that she was coming to New York City to attend the meeting of the High Level Commission on Legal Empowerment of the Poor at the United Nations, on January 20 and 21. Plaintiff and defendant met on January 22, 2006 at a New York City hotel.

At the New York meeting, defendant told plaintiff that she had signed a contract to publish her memoirs with Random House, a New York publisher. Defendant said that she would try to get Random House to also publish the book that she and plaintiff were writing. Plaintiff expressed doubt that Random House would want the book. If Random House refused, they agreed, plaintiff would pursue other publishers. Defendant told plaintiff that the contract with Random House promised her a $350,000 advance payment on her memoirs, and that she would ask Random House to pay plaintiff and herself a $700,000 advance for their book, plus a percentage of the sale proceeds. Plaintiff said that defendant should ask for a $1 million advance payment on their book. The parties agreed that defendant, who had some renown stemming

from the Nobel Peace Prize, would be the first named author on the book and plaintiff the second named author.

Thereafter, the parties had more communications through e-mail and mail. On March 11, 2006, plaintiff sent defendant the final version of book. Defendant suggested that plaintiff translate the book into English. Plaintiff wanted to hire a professional translator, but he eventually acceded to defendant's urging that he translate the book himself. Plaintiff translated the book with the help of the other plaintiff, and sent defendant the finished English version in May 2006.

On May 23, 2006, defendant submitted the English manuscript to her agent, defendant Strothman, who presented it to Random House in New York City. On July 1, 2006, Random House informed Strothman that it would not publish the book. According to plaintiff, Strothman knew that defendant's name was important for the book's success. Nonetheless, Strothman told defendant, on July 5, 2006, that defendant should not publish it under her name. Strothman told defendant that if plaintiff wanted to publish it, he should use his name only.

On July 8, 2006, defendant told plaintiff by e-mail that being named as coauthor on their book would damage the sales of books she planned to write in the future. She stated that she was willing to write the introduction to the book, but that her name would not appear as coauthor. Defendant informed plaintiff that she had political reasons for not being named coauthor on their book. She said that she would not help plaintiff find a publisher and that he could seek a publisher by himself. Plaintiff contends that defendant's refusal to allow her name on their book makes it impossible for the book to be published or to succeed if it is published.

DISCUSSION

Under CPLR 3211 (a) (8), a complaint may be dismissed where the court lacks jurisdiction over the defendant. Jurisdiction here is premised on CPLR 302 (a) (1), which allows for jurisdiction over a party who is not domiciled in New York who transacted business in New York.

To be subject to personal jurisdiction pursuant to CPLR 302 (a) (1), a defendant must transact business in New York and there must be a substantial relationship between the New York activities and the claims asserted in the complaint (*Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]; *Courtroom Television Network v Focus Media, Inc.*, 264 AD2d 351, 352 [1st Dept 1999]). To transact business is to engage in purposeful activities, defined as activities by which a defendant, through volitional acts, "avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws" (*McKee Elec. Co. v Rauland-Borg Corp.*, 20 NY2d 377, 382 [1967], quoting *Hanson v Denckla*, 357 US 235, 253 [1958]).

The party asserting jurisdiction bears the burden of proof (*Roldan v Dexter Folder Co.*, 178 AD2d 589, 590 [2d Dept 1991]), and the issue of personal jurisdiction must be determined separately for each cause of action asserted in the complaint (*Rates Tech., Inc. v Diorio*, 626 F Supp 1295, 1297 [ED NY 1986]).

Where a plaintiff puts forth contractual claims, the primary factors considered by the courts in determining whether the defendant transacted business in New York include whether the defendant negotiated or executed the contract in New York, whether the contract was to be performed here, and whether the defendant had an "on-going contractual relationship" with a

New York resident (*Hutton v Priddy's Auction Galleries, Inc.*, 275 F Supp 2d 428, 439 [SD NY 2003]).

A single transaction in New York may provide the basis for jurisdiction, provided that it is purposeful and related to the claims against the defendant (*Kreutter,* 71 NY2d at 467). One meeting by the parties in New York, as in this case, is rarely the basis for jurisdiction, unless that meeting is significant to the development of the contractual relationship and other factors are present, such as the contract being performed in New York (*Cooper, Robertson & Partners, LLP v Vail*, 143 F Supp 2d 367, 372 [SD NY 2001]). Jurisdiction has been found based on one meeting in New York where the defendant came to the plaintiff's New York office and "participated in extensive, substantial negotiations essential to the formation of the contractual relationship," although the contract was executed later in Georgia (*Geller v Newell,* 602 F Supp 501, 503 [SD NY 1984]); the defendant came to the plaintiff's New York office and placed orders for merchandise to be mailed to Arkansas (*M. Fabrikant & Sons, Inc. v Adrianne Kahn, Inc.*, 144 AD2d 264, 265 [1st Dept 1988]); and the defendant came to New York to negotiate and agree on an employment agreement, although he did his work outside New York (*George Reiner & Co. v Schwartz,* 41 NY2d 648, 653 [1977]).

On the other hand, New York courts have declined to assert jurisdiction in single transaction cases where the defendant's visit was not for the purpose of initiating or forming a relationship, but to alleviate problems under a pre-existing relationship (*United States Theatre Corp. v Gunwyn/Lansburgh Ltd. Partnership,* 825 F Supp 594, 596 [SD NY 1993]); the defendant was in New York to execute a contract that was negotiated and performed outside New York (*Presidential Realty Corp. v Michael Square West, Ltd.*, 44 NY2d 672, 673 [1978]);

the one meeting in New York was to modify an agreement (*PaineWebber, Inc. v Westgate Group, Inc.*, 748 F Supp 115, 119 [SD NY 1990]; and the contract was not negotiated or performed in New York, although the defendant attended a New York meeting where the specific aspects of the project that the plaintiff sued on were discussed (*Posven, C.A. v Liberty Mut. Ins. Co.*, 303 F Supp 2d 391, 399 [SD NY 2004]).

The transacting business test depends on the quality of the New York transaction (*id.*). To that end, courts have asked whether the meeting in New York "play[ed] a significant role in establishing or substantially furthering the relationship of the parties" (*id.* at 398) or was "an integral part of a transaction directed at New York" (*Barrett v Tema Dev. (1988), Inc.*, 463 F Supp 2d 423, 431 [SD NY 2006], *aff'd* 251 Fed Appx 698 [2d Cir 2007]). Whether or not the activities in New York are of the appropriate nature for jurisdiction is determined by an analysis of the totality of the circumstances (*Hutton*, 275 F Supp 2d at 439).

Defendant promised that her name would appear as coauthor on the book. At the New York meeting, defendant amplified upon this promise, stating that her name would appear before plaintiff's name, and the parties discussed some particulars of submitting the book to a publisher. The complaint is premised on defendant's alleged breach of the promise that she would appear as coauthor. However, this promise, along with almost every other matter pertaining to the parties' project, occurred outside New York. Consequently, the meeting in New York is an insufficient predicate for jurisdiction over defendant. The contract was not negotiated or performed here. Plaintiff does not show that the New York meeting substantially furthered the parties' relationship. Nor was it essential to the formation or continuation of their project. By having this one meeting with plaintiff in New York, defendant did not invoke the benefits and

protections of New York law. It cannot be said that she projected herself into New York (*see PaineWebber,* 748 F Supp at 119). There is the consideration that plaintiff is not a New York resident. Therefore, the defendant did not transact business in New York within the meaning of CPLR 302 (a) (1).

Defendant's agent submitted the book to a New York publisher. However, the complaint is only tangentially connected to that transaction. The complaint concerns defendant's alleged breach of her promise to plaintiff to be named as coauthor. Defendant's relationship with the publisher does not afford a basis for the exercise of jurisdiction over her for the purposes of plaintiff's claims against her.

The exercise of personal jurisdiction must also comport with the Due Process Clause of the Fourteenth Amendment to the United States Constitution (*LaMarca v Pak-Mor Mfg. Co.,* 95 NY2d 210, 213 [2000]). A state may exercise personal jurisdiction over a non-domiciliary defendant provided that it has certain "minimum contacts" with the forum "such that maintenance of the suit does not offend traditional notions of fair play and substantial justice" (*International Shoe Co. v State of Washington Office of Unemployment Compensation & Placement,* 326 US 310, 316 [1945]). The test for "minimum contacts" has been refined over the years to whether a defendant's "conduct and connection with the forum State" are such that it "should reasonably anticipate being haled into court there" (*World-Wide Volkswagen Corp. v Woodson*, 444 US 286, 297 [1980]). Defendant's contacts with New York are too minimum for her to have reasonably anticipated being haled into court here, based on the one meeting with plaintiff.

Defendants other arguments for dismissal need not be addressed and the motion is

granted. The part of the motion to stay discovery is denied as moot.

To conclude, it is

ORDERED that the motion by defendant Shirin Ebadi to dismiss the complaint as against herself is granted and the complaint is hereby severed and dismissed as against said defendant; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the rest of the action shall continue.

No costs.

Dated: January 12, 2009

ENTER:

RICHARD B. LOWE III
J.S.C.

FILED
JAN 14 2009
COUNTY CLERK'S OFFICE
NEW YORK